IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO. 253 OF 1999

Vijay Shankar Shinde & 3 Ors. ....Appellants.
(Orig.Accd.)

Versus

The State of Maharashtra ....Respondent.

Mrs.Latika Khemani (appointed), Adv. for the appellants.

Mrs.P.H.Kantharia, APP for the State.

CORAM: V.G. PALSHIKAR
AND
ANOOP V. MOHTA, JJ.

21.9.2004.

ORAL JUDGMENT: (Per Palshikar, J.)

Being aggrieved by the judgment and order of conviction and sentence passed by II Additional Sessions Judge, Satara, on 27.5.1999 in Sessions Case No.15 of 1997, the appellants-accused Nos.1 to 3 have preferred this appeal on the grounds mentioned in the memo of appeal.

2. With the assistance of learned counsel and the learned Assistant Public Prosecutor we have scrutinized and reappreciated the evidence on the record on the basis of which the learned trial Judge came to the conclusion of conviction.

3. The prosecution case as revealed on reappreciation of evidence by us stated briefly is that there was family feud between the family of the accused and the family of the complainant who were close relations. Suits are filed, suits are pending and the dispute is admitted. On 10.10.1996 according to the prosecution around 12.00 p.m. Dattatraya one of the injured persons was assaulted by the accused persons and on being stopped by mother-in-law of Dattatraya accused ran away. Thereafter Tanaji deceased came home and took Dattatraya by rickshaw towards hospital. They were accosted at Gandhi chowk by accused persons who broke the glass of rickshaw, turned down the rickshaw, pulled out the victims and assaulted them. This assault was witnesses by Jayashri wife of Tanaji. She therefore filed a complaint before the police. Investigation was started and on completion of investigation the accused persons were charged of having committed murder of the deceased Tanaji and grievous hurt to Dattatraya. The prosecution examined as many as 18 witnesses to prove its case and the learned trial Judge on appreciation of that evidence came to the conclusion of guilt and convicted the accused under section 302 of Indian Penal Code as aforesaid. It is this order of conviction and sentence which is assailed before us in this appeal on the grounds mentioned in memo of appeal as also verbally canvassed before us by the learned advocate appearing on behalf of the accused as an advocate appointed for the defense of the accused.

4. The learned counsel contended that the conviction is unsustainable in law because there are discrepancies in the evidence of witnesses and all the witnesses

examined are highly interested as on the showing of this very witness several others were present when assault took place and therefore independent evidence could have been adduced before the Court to bring out the complete truth. The learned public prosecutor supported the order of conviction pointing out the consistencies and corroborative nature of evidence and contended that the order of conviction is liable to be affirmed. We will consider these rival contentions in the light of evidence as it stands. P.W.1-Bapu Bhosale is the panch witness who proves the seizure of the clothes belonging to the injured persons i.e. the victims. P.W. 2 – Shrirang Nikam was panch witness to the recovery of an axe at the instance of the accused but he has turned hostile. P.W. 3 – Haridas Sargar was panch witness to the same recovery. He also has turned hostile. There is thus no proof of recovery of the axe at the instance of the accused person.

5. P.W. 4 – Ananda Vibhute is pancha to spot panchnama in whose presence blood was collected. He has proved the spot panchnama.

6. P.W. 5 – Youraj Indalkar and P.W. 6 – Rajkumar Ghorpade are the panchas to the recovery of clothes of the accused persons but both the panchas have turned hostile and therefore there is no adequate proof of the fact of such recovery.

7. P.W. 7 – Balu Chavan and P.W. 8 – Sanjay Kadam are the panch witnesses to recovery of blood stained stick. They also have turned hostile and therefore there is no proof of such recovery.

8. P.W. 9 – Jayashri Shinde is an eye witness and wife of the deceased Tanaji and she has given a detailed account of how the assault took place after she narrated the enmity which existed between the parties. She has deposed that she was told by the deceased Tanaji her husband how they were assaulted by accused persons. No doubt she is an interested witness but that by itself cannot be a reason to discard her testimony.

9. P.W. 10 – Yashodabai Kadam is witness to the quarrel that preceded the assault in Gandhi chowk. There is nothing in the testimony of this witness which can be a reason for disbelieving her testimony. The prosecution thus has proved that Yashodabai Kadam did see the assault on Dattatraya near his house.

10. P.W. 11 – Datatraya Shinde is the person who was himself injured and he has given the eye witness account as to what transpired on 10.10.1996. He has given details of how there was enmity between the parties and how he was assaulted. His testimony goes to prove the assault and gets corroboration from other witnesses also. We will consider the testimony of this witness in extenso. He states as how there was enmity between the parties, then narrates as to what happened in the morning of 10.10.1996. He had just returned home around 12 noon and was opening his house when the accused started abusing him. He therefore told him not to abuse and to take such legal steps as they may deem fit. Thereafter he entered the house and was followed by the accused. He names them as Popat, Vijay and Sanjay and they started assaulting him. The witness states that Popat hit him on head with the stick and thereafter the other two beat him. He shouted and came out of the house and was sitting on the steps. Thereafter Tanaji came

at the spot and prepared to take him to the hospital by rickshaw. When they reached Gandhi chowk, they stopped to decide as to which hospital should be chosen when the accused who were standing near the shop of Hari Wani came near the rickshaw, pulled out Tanaji, broke the glass of rickshaw and over turned the rickshaw and when Tanaji started running they chased him and hit him. The witness then went ahead to rescue his brother when Vijay came and hit on his left hand. Witness then says that by that time others arrived but the accused threatened them and therefore nobody intervened. He then says that thereafter wife of Tanaji came and Tanaji told her something which the witness did not hear. This statement of the witness is a clear indication of the truthfulness with which the witness was deposing. He corroborates the fact that Jayashree came on the spot, he corroborates the fact that she was told something by Tanaji but frankly admits that he could not hear what was said because of distance. He then states that the accused prevented others from giving water to the victims. He then states how he was hospitalized and stayed there for 27 days under treatment. He was cross examined extensively. In cross examination he admits of his prosecution for illicit distillation of liquor. Certain minor contradictions have been noted by the learned advocate for the appellants-accused. We are of the opinion that such minor contradictions always exist in a deposition when something which happened months or years ago is narrated. When police statement is recorded, it is immediately recorded and confusion caused due to terror and attack exists which may be clarified at later stage. Contradictions or omissions which are not material are therefore liable to be ignored for proper appreciation of the evidence. So considered we see no reason why the testimony of this witness should be disbelieved.

11. P.W. 12 – Dagadu Shinde is also an eye witness. He gives a very good description as to what happened on 10.10.1996. He has reason to be where he was viz. Gram Panchayat's office. Around 1.30 p.m. He heard shouts and therefore came out of the bank and stood near the door of the bank. It is in Gandhi chowk. He saw that Vijay, Sanjay and Popat were beating Tanaji with sticks, Tanaji was sitting on the driver seat in rickshaw and Dattatraya was on the back seat. They pulled them out, broke glass of the rickshaw and over turned the rickshaw. Tanaji tried to run but the accused obstructed him and they also pulled out Dattatraya from rickshaw and hit him. Tanaji fell to the ground near the shop of Khadage. The accused were threatening the witnesses and others and therefore they did not interfere with the assault. This witness has been duly cross examined and there is nothing in the cross examination which will require the witness being disbelieved. Apart from that this witness substantially corroborates other witnesses including Dattatraya who was injured. He is also corroborated by Tushar another witness in the vicinity.

12. We will therefore consider the testimony of that witness. P.W. 13 is Tushar Sawant. He worked as compounder in the dispensary of Dr.Sanjay Yadav and was coming back to dispensary around 1.30 when he saw a rickshaw coming from temple side. It stopped in front of the shop of Khadage and accused Vijay, Sanjay and Popat came there. They hit the rickshaw with stick, pulled Tanaji out of rickshaw, he started running, they obstructed him and hit him with stick. Dattatraya was saying not to beat Tanaji. They beat Dattatraya also. Dattatraya went to the pan shop and sat there. He

then says that at that time P.W. 12 – Dagadu Shinde was there and others had gathered. This witness is also duly cross examined. It will be seen that he corroborates in all material particulars with the eye witness viz. P.W. 12. He also corroborates with the injured eye witness and therefore there is ample evidence on record duly corroborated by the witnesses whose presence as eye witnesses cannot be doubted, whose testimony cannot be disbelieved as it finds due corroboration in the statements made by eye witnesses.

13. P.W. 14 – is Krishnath Patil who is a panch witness to recovery of certain articles and clothes. This witness came to the spot after assault. He saw accused armed with sticks as also saw injured persons lying there. P.W. 15 – Manohar Chikhale is the Police Sub Inspector. P.W. 16 is the Dr.Sadashiv Desai who proved the injuries on Dattatraya the injured eye witness. He states that the injuries were serious. P.W. 17 - Anand Shinde is son of Dattatraya. His evidence is not of much value either way. P.W. 18 - Dattatraya Karale is the investigating officer. He states in detail as to how the investigation took place and how the accused are prosecuted. P.W. 19 – Dr.Sudhir Bakshi is the doctor who conducted post mortem and proved that the death of Tanaji was homicidal.

14. This therefore is the evidence on the basis of which the learned trial Judge has recorded the order of conviction. We have scrutinized the impugned order also and we affirm the findings given by the learned trial Judge. We also accept the reasoning given by the learned trial Judge for coming to those findings. We therefore see no reason

to interfere with the impugned order. Appeal therefore fails and is dismissed. The amount quantified as fees payable to each to the learned Prosecutor and the learned Advocate appointed Mrs.Latika Khemani is Rs.1000/- for this appeal.

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